



Retail Market Opening Programme
 Ofwat
 21 Bloomsbury Street
 London
 WC1B 3HF

31 May 2016

Dear Sirs

Retail market opening – further changes to all instruments of appointment: a consultation

Thank you for the opportunity to review and comment on your proposed changes to the instruments of appointment of water and wastewater companies. We have structured our response as requested on page 5 of the consultation.

Q1: Do you agree with the proposed new conditions summarised in Table 1.1?

Condition	Affinity Water comments
MAC condition	<p>We agree that a MAC condition is required but consider that the proposed condition (Draft Condition 1), as drafted, is unnecessarily complex. In light of Ofwat’s role in approving all changes to the MAC, we consider there are already sufficient safeguards in place and that paragraphs (2) and (3) of the proposed condition are therefore unnecessary. If it is considered that the provisions contained in paragraphs (2) and (3) of the proposed condition are required, these could be included in the MAC itself. We therefore suggest that the proposed MAC condition can be limited to the following text:</p> <p>(1) <i>The Appointee must:</i></p> <p>(a) <i>be a party to and comply with the Market Arrangements Code; and</i></p> <p>(b) <i>take all steps within its power to ensure that the Market Arrangements Code remains a document that is designed to facilitate the principles set out in Schedule 1 of the Market Arrangements Code (the “MAC Principles”)</i></p>
Stapling condition	<p>We agree that a stapling condition is required.</p> <p>We can envisage some practical difficulties arising from the drafting of paragraph 1(b). For example, as drafted, this could arguably require the Appointee to operate its Wholesale Business and Retail Business under different names, as this would be the situation if the businesses were held in separate legal entities. We doubt this is the intention of the proposed condition. We consider that the absolute nature of the obligation in paragraph 1(b) is problematic and that as not all situations where the obligation could apply can be envisaged, it would be appropriate for the condition to be limited to those matters reasonably required for the effective operation of the Competitive Market (as defined in Condition R2).</p> <p>Further, we consider that paragraph 1(b) should refer only to the holding of a water supply licence in the case of Appointees that are water undertakers but not sewerage undertakers.</p>

Condition	Affinity Water comments
CPCoP	We agree that a new condition is required to provide for adherence to the Customer Protection Code of Practice and have no comments on the drafting of Draft Condition 2.

Q2: Do you agree with the proposed changes to existing conditions summarised in Table 1.2?

Condition	Affinity Water comments
Terminology	We recognise there will need to be some changes to terminology and definitions in Condition A and have no objection in principle to such changes.
Condition S	<p>We agree that Condition S will need to be dis-applied from market-opening but retained for the time being in respect of the combined supply licence regime.</p> <p>We consider it would appropriate in the introductory paragraph to use the definition of “Go-Live” used in Condition R2, rather than a specified date. It would also be prudent to include provision for Ofwat to notify Appointees when the Combined Supply Licence Regime has been superseded.</p>
Condition R 1-4	<p>We agree that paragraphs 1 to 4 of Condition R will need to be dis-applied from market-opening but retained for the time being in respect of the combined supply licence regime.</p> <p>We consider it would appropriate in the introductory paragraph to use the definition of “Go-Live” used in Condition R2, rather than a specified date. It would also be prudent to include provision for Ofwat to notify Appointees when the Combined Supply Licence Regime has been superseded.</p>
Condition F6 A.2A	<p>We have no objection to the principle of carving out a separate certificate of adequacy in respect of the non-household retail business of the Appointee.</p> <p>To achieve this objective, we consider that the proposed amendment to Condition F6A.2A needs to be clarified so that the carve out is limited to retail activities undertaken in respect of “Eligible Premises” (as defined in Draft Condition 3). Currently the carve out extends to retail activities generally.</p>
Condition Q	<p>We agree that Condition Q requires modification to ensure that all affected non-household customers will receive drought compensation payments from the Appointee, regardless of the retailer supplying them.</p> <p>We consider that Condition Q should be further amended to make it clear that where the Appointee has an agreement with a licensee under Section 66D, the Appointee discharges its duty under Condition Q by making the required payments to the licensee/retailer in accordance with the Wholesale Retail Code.</p>

Condition	Affinity Water comments
Condition G	<p>We note that Ofwat intends to amend Condition G so that it applies only to residential customers. We consider that Condition G should apply to household customers only.</p> <p>In order that non-household customers continue to benefit from the any protections currently included in Condition G, we consider these protections should be included in the Customer Protection Code of Practice. We do not support moving the obligations into a different condition and note that this would be unnecessary given proposed Draft Condition 2 – Customer Protection Code of Practice.</p> <p>We have yet to see the proposed text of amended Condition G and would expect this to be shared with Appointees for comment in advance of any formal consultation under Section 13 or proposal under Section 55.</p>
Condition I	<p>We note that Ofwat does not intend to amend Condition I.</p> <p>We consider that the Condition should be amended so that it applies only to household customers. Provisions which currently apply to non-household customers should be included in the Customer Protection Code of Practice and/or Wholesale Retail Code.</p>
Condition R 7-9	<p>We support Ofwat’s proposal to retain Conditions R7 to R9, for the time being, given their application to combined supply licences.</p> <p>We agree that the Wholesale Retail Code should be reviewed and updated where necessary to address any inconsistencies.</p>
Condition F6	<p>We are supportive of there being no changes to Condition F6.</p> <p>We consider that the stapling condition should be introduced as a new condition rather than as a modification to Condition F.</p>
Condition R5	<p>We do not object to Condition R5 being retained in its current form.</p>

Q3: Do you consider that derogations may be required for small companies and/or companies whose supply systems are wholly or mainly in Wales?

No comments.

Q4: Do you agree with our proposal to use “sunset” and/or “sunrise” clauses?

Yes.

Q5: Do you agree with our proposal to use section 55 of the WA14 to make these changes?

In principle, we recognise that this may be an effective way of implementing necessary changes. We reserve the right to make further representations about proposed modifications, whether proposed by Ofwat under Section 13 of the Water Industry Act 1991 or Section 55 of the Water Act 2014.

Q6: Do you have any comments on the proposed drafting set out in the Appendices?

We have provided our comments on drafting in our responses to Questions 1 and 2.



We have no further comments to make on the consultation.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Tim Monod'.

Tim Monod
Director of Legal and Assurance